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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 413 and 414

[CMS-1691-CN]

RIN 0938-AT28

Medicare Program; End-Stage Renal Disease Prospective Payment System, Payment for Renal Dialysis Services Furnished to Individuals with Acute Kidney Injury, End-Stage Renal Disease Quality Incentive Program, Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Competitive Bidding Program (CBP) and Fee Schedule Amounts, and Technical Amendments to Correct Existing Regulations Related to the CBP for Certain DMEPOS; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule; correction.

SUMMARY: This document corrects technical and typographical errors that appeared in the final rule published in the **Federal Register** on November 14, 2018 titled "Medicare Program; End-Stage Renal Disease Prospective Payment System, Payment for Renal Dialysis Services Furnished to Individuals With Acute Kidney Injury, End-Stage Renal Disease Quality Incentive Program, Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Competitive Bidding Program (CBP) and Fee Schedule Amounts, and Technical Amendments To Correct Existing Regulations Related to the CBP for Certain DMEPOS."

DATES: Effective Date: This correction is effective on January 1, 2019.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2018–24238 of November 14, 2018 (83 FR 56922), there were technical and typographical errors that are identified and corrected in the Correction of Errors section below. The provisions in this correction document are effective as if they had been included in the document published on November 14, 2018. Accordingly, the corrections are effective January 1, 2019.

II. Summary of Errors

On page 57029, we inadvertently made several technical and typographical errors by referencing the final rule instead of the proposed rule. We are correcting those errors by replacing references to “this rule” and “this final rule” with the correct reference to the Calendar Year (CY) 2019 End-Stage Renal Disease Prospective Payment System, Durable Medical Equipment, Prosthetics, Orthotics and Supplies (CY 2019 ESRD PPS DMEPOS) proposed rule.

III. Waiver of Proposed Rulemaking

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (APA), the agency is required to publish a notice of the proposed rule in the **Federal Register** before the provisions of a rule take effect. Similarly, section 1871(b)(1) of the Social Security Act (the Act) requires the Secretary of the Department of Health and Human Services to

provide for notice of the proposed rule in the **Federal Register** and provide a period of not less than 60 days for public comment. In addition, section 553(d) of the APA, and section 1871(e)(1)(B)(i) of the Act mandate a 30-day delay in effective date after issuance or publication of a rule. Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions from the notice and comment and delay in effective date requirements; in cases in which these exceptions apply, sections 1871(b)(2)(C) and 1871(e)(1)(B)(ii) of the Act provide exceptions from the notice and 60-day comment period and delay in effective date requirements of the Act as well. Section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act authorize an agency to dispense with normal rulemaking requirements for good cause if the agency makes a finding that the notice and comment process is impracticable, unnecessary, or contrary to the public interest. In addition, both section 553(d)(3) of the APA and section 1871(e)(1)(B)(ii) of the Act allow the agency to avoid the 30-day delay in effective date where such delay is contrary to the public interest and an agency includes a statement of support.

We believe that this correcting document does not constitute a rulemaking that would be subject to the notice and comment or delayed effective date requirements of the APA or section 1871 of the Act. This document simply corrects technical and typographical errors in the preamble, but does not make substantive changes to the policies or payment methodologies that were adopted in the final rule. As a result, this correcting document is intended to ensure that the information in the final rule accurately reflects the policies adopted in that document.

Even if this were a rulemaking to which the notice and comment and delayed effective date requirements applied, we find there is good cause to waive such

requirements. Undertaking further notice and comment procedures to incorporate the corrections in this document in the final rule or delaying the effective date of the corrections would be contrary to the public interest to ensure that the rule accurately reflects our policies as of the date they take effect. Further, such procedures would be unnecessary because we are not making any substantive revisions to the final rule, but rather, we are simply correcting the **Federal Register** document to reflect the policies we previously proposed, received public comment on, and subsequently finalized in the final rule. For these reasons, we believe that we have good cause to waive the notice and comment and delay in effective date requirements.

IV. Correction of Errors

In FR Doc. 2018–24238 of November 14, 2018 (83 FR 56922), make the following corrections:

1. On page 57029, first column, second full paragraph,
 - a. In line 16, the reference "this rule" is corrected to read "the CY 2019 ESRD PPS DMEPOS proposed rule".
 - b. In line 17, the reference "this final rule" is corrected to read "the CY 2019 ESRD PPS DMEPOS proposed rule".
2. On page 57029, second column, second full paragraph, in lines 27 and 28, the reference "this final rule" is corrected to read "the CY 2019 ESRD PPS DMEPOS proposed rule".

CMS-1691-CN

Dated: December 20, 2018

Ann C. Agnew,

Executive Secretary to the Department,

Department of Health and Human Services.

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